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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA**

11 **SAN JOSE POLICE OFFICERS'**  
12 **ASSOCIATION,**

13 **Plaintiff,**

14 **v.**

15 **CITY OF SAN JOSE, BOARD OF**  
16 **ADMINISTRATION FOR POLICE**  
17 **AND FIRE DEPARTMENT**  
**RETIREMENT PLAN OF CITY OF**  
**SAN JOSE, and DOES 1-10, inclusive,**

18 **Defendants.**

19 **AND RELATED CROSS-COMPLAINT**  
20 **AND CONSOLIDATED ACTIONS**  
21

No. 1-12-CV-225926  
(and Consolidated Actions  
1-12-CV-225928, 1-12-CV-226570,  
1-12-CV-226574, 1-12-CV-227864,  
and 1-12-CV-233660)

**PLAINTIFF SAN JOSE POLICE OFFICERS'**  
**ASSOCIATION'S RESPONSE TO SEPARATE**  
**STATEMENT OF UNDISPUTED FACTS, AND**  
**STATEMENT OF ADDITIONAL UNDISPUTED**  
**FACTS**

Date: June 7, 2013  
Time: 9:00 a.m.  
Place: Dept. 2  
Judge: Hon. Patricia M. Lucas

Complaint Filed: June 6, 2012  
Trial Date: July 22, 2013

**DEFENDANT AND CROSS-COMPLAINANT CITY OF SAN JOSE'S**

**STATEMENT OF UNDISPUTED FACTS<sup>1</sup>**

1. Unconstitutional Impairment of Contract, Cal. Const., Art. I, § 9.
2. Unconstitutional Taking of Private Property, Cal. Const., Art. I, § 19.
3. Unconst. Taking of Private Prop. Without Due Process, Cal. Const., Art. I, § 7.
4. Promissory and Equitable Estoppel [*not at issue as to SJPOA*].
5. Impairment of Contract, U.S. Const., Art. I, § 10.
6. Unconst. Taking of Private Property, U.S. Const., 5th and 14th Amendments.
7. Unconst. Violation of Due Process, U.S. Const., 5th and 14th Amendments.

**Issues No. 1.A-7.A: San José Charter § 1506-A (Employee Additional Pension Contributions)**

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1506-A does not violate Cal. Const., Art. I, § 9 / Cal Const., Art. 1, § 19 / Cal. Const., Art. I, § 7 / U.S. Const., Art. I, § 10 / U.S. Const., 5th and 14th Amendments (takings) / 5th and 14th Amendments (due process) and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to pay additional pension contributions to defray pension plan unfunded liabilities. Plaintiffs have no vested right to the City paying for all pension plan unfunded liabilities.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
1. Section 1506-A ("Current Employees") of Measure B states:	Disputed to the extent the City implies it may lawfully apply Measure B to

<sup>1</sup> The City's approximately 200 page Separate Statement repeats the identical set of 59 Undisputed Facts for *each* of the six separate causes of action at issue as to SJPOA, i.e., state and federal Contracts Clause, Takings, and Due Process. To avoid unnecessary repetition, an over-long separate statement, and for judicial economy, SJPOA responds to the City's Undisputed Facts Nos. 1-59 once.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>(a) "Current Employees" means employees of the City of San José as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).</p> <p>(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but not more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.</p> <p>(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented or any reason, the compensation adjustments shall apply to all Current Employees.</p> <p>(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees'</p>	<p>active police officers represented by SJPOA ("Police Officers") to deprive them of vested pension rights. Specifically, Police Officers have a vested right to City payment of all unfunded accrued actuarial liability ("UAAL") generated by the Police and Firefighter Retirement Plan of 1961 ("P&amp;F Retirement Plan").</p> <p><b>Supporting Evidence:</b></p> <ul style="list-style-type: none"> <li>City RJN, Ex. D (SJMC 3.36.1520 [employee contributions defined as not including "any deficit resulting from the fact that previous rates of contribution . . . were inadequate"]); <i>id.</i> (SJMC 3.36.1550 ["the City of San Jose shall contribute to the retirement fund, monthly, all such amounts . . . to make this plan actuarially sound"]); <i>id.</i> SJMC 3.36.1555 [employees only pay UAAL for new or increased benefits]; City RJN Ex. A (Charter Section 1500 [authorizing benefits in SJMC]; <i>id.</i> (Charter Section 1504(e) [expressly authorizing the City Council to "grant greater or additional benefits" beyond those in the Charter]); <i>id.</i> (Charter Section 1504(b)-(c) [mandating actuarially sound system, including new benefits]; SJPOA RJN Exs. 1, 11, 13, 14 [legislative history of City payment of all UAAL in Charter and SJMC, except for between 1965-71]); Robb Decl. ¶¶ 13-14 [officers do not pay UAAL; all current Police Officers hired after City enacted ordinance obligating itself to pay all UAAL]); City RJN</li> </ul>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Retirement System.</p> <p>(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Defendant's Request for Judicial Notice ("RJN"), Exh. B, pp. 4-5 ("Measure B").</li> </ul>	<p>Ex. D (SJMC 3.36.120.A ["the rights of each member . . . to benefits accrued . . . shall be nonforfeitable]).</p>
<p>2. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</li> </ul>	<p>Undisputed.</p>
<p>3. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend</p>	<p>Disputed: statement is incomplete and misleading because the City selectively quotes from former Charter section 78b. The undisputed evidence is that that section only gave the City Council authority to <i>increase</i> pension benefits, not to decrease them. The relevant part</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;...”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).</li> </ul>	<p>of former Charter section 78b is as follows:</p> <p><i>“[T]he Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan or plans established pursuant to said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or establish a new or different plan or plans for eligible members of the police or fire departments of the City of San Jose, <b>for the purpose of providing benefits for members . . . in excess of those benefits authorized or required by the provisions of said Section 78a</b>, including service retirement allowances, disability retirement allowances and death, survivorship and other such benefits payable to deceased members’ surviving spouses, dependents or estates . . . ; provided, however, that [p] (1) The Council <i>shall not decrease any of said benefits below those which Section 78a makes mandatory</i> ...”</i></p> <p><b>Supporting Evidence:</b></p> <ul style="list-style-type: none"> <li>City RJN Ex. E. (emphases added.)</li> </ul>
<p>4. The ballot argument in favor of Proposition A stated:</p> <p>“THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE!</p>	<p>Disputed: statement is incomplete and misleading because the City selectively quotes from the ballot argument. The undisputed evidence is that Proposition A was intended solely to give the City Council authority to <b>increase</b> pension benefits, not to decrease them:</p> <p>“The purpose of this amendment is to enable the City Council to take legal steps to provide survivor benefits for</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).</li> </ul>	<p>your policemen’s and firemen’s families . . . . .</p> <p>“SURVIVOR BENEFITS ARE PROHIBITED AT PRESENT IN THE CITY CHARTER! In order to allow the city Council to adopt reasonable benefits, it is necessary to amend the City Charter. In other words, this amendment merely unties the hands of your City Council . . . .</p> <p>“Two years ago, a very long, detailed plan was presented and defeated. Opponents of this plan argued that this matter should be referred to the City Council for action and not included as mandatory provisions of the City Charter. This amendment will do just that. This amendment will allow the City Council to have legal authority to act on survivor benefits by ordinance and thereby provide protection for widows and orphans.”</p> <p><b>Supporting Evidence:</b></p> <ul style="list-style-type: none"> <li>City RJN Ex. E (1961 Charter Amendments) and Ex. F (Proposition A Ballot Pamphlet).</li> </ul>
<p>5. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and</p>	<p>Disputed to the extent the City argues Charter Section 1500 authorizes Measure B. <b>First</b>, the plain text of Section 1500 provides the “<b>Council</b> may . . . amend” and does not authorize Measure B—a <i>charter</i> amendment enacted by the <i>voters</i>. <b>Second</b>, Section 1500 does not contain any express language preventing the creation of vested rights, let alone evidence such intent. <b>Third</b>, the Council’s authority under Section 1500</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.</i>"</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. G (1965 Charter) (emphasis added).</li> </ul>	<p>to "amend or otherwise change any retirement plan . . . or adopt or establish a new or different plan" is <i>expressly</i> subject to the benefits guaranteed elsewhere in the Charter, in particular the minimum benefits for Police Officers contained in Charter Section 1504, including City payment of all UAAL. <b><i>Fourth</i></b>, Section 1500's legislative history confirms it was not intended to prevent vested rights or authorize reductions to benefits.</p> <p><b>Supporting Evidence:</b></p> <ul style="list-style-type: none"> <li>City RJN Ex. A; <i>id.</i>, Ex. B (Resolution 76518 [Measure B is a charter amendment Council placed on ballot to be enacted by the voters]; <i>id.</i>, Ex. G (Sections 1500-1504 of 1965 Charter); <i>id.</i> Ex. F (Prop. A Ballot Language); SJPOA RJN Ex. 2 [City Attorney's Analysis of Measure W, November 2, 2010 Election: Measure W revised Section 1500 and 1501 to give the Council authority to exclude new employees from (1) existing retirement plans and (2) minimum benefits in the charter); City RJN Ex. E-F (legislative history).</li> </ul>
<p>6. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of</p>	<p>Disputed to the extent the City argues Charter Section 1503 authorizes Measure B. SJPOA incorporates its response to No. 5, because the same analysis applies to Charter Section 1503.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, <i>the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.</i>"</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. G (1965 Charter) (emphasis added).</li> </ul>	
<p>7. Section 902 of the San Jose City Charter states: "the compensation of all City appointive officers and employees, except as otherwise provided in this Charter, shall be fixed by the Council."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. A.</li> </ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers to deprive them of vested pension rights. SJPOA incorporates its response to No. 1.</p>
<p>8. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. A</li> </ul>	<p>Undisputed.</p>



Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>9. City Charter section 1500 states:  “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. A</li> </ul>	<p>SJPOA incorporates its response to No. 5, because the quoted text is materially similar and is part of the whole therein quoted.</p>
<p>10. The City Council has enacted some ordinances implementing Measure B.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).</li> </ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers to deprive them of vested pension rights. SJPOA incorporates its response to No. 1.</p>
<p>11. In 2010, a Coalition of City unions made a proposal to the City which stated:</p> <p>5.1.2. Additional Retirement Contribution.</p> <p>Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c)</p>	<p>Undisputed, but misleading and irrelevant as to Police Officers because that agreement on its face only applied to the Federated Plan, not the P&amp;F Retirement Plan.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶¶ 16-19, Exh. 2.</li> </ul>	
<p>12. Other union proposals, including proposals by the SJPOA and IAFF, also proposed that employees would pay additional pension contributions to defray pension plan unfunded pension liabilities.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶¶ 17, 18, Exhs. 3-6.</li> </ul>	<p>Disputed. Police Officers did not pay any UAAL or otherwise waive any vested rights. Article 5.1 of SJPOA's memorandum of understanding ("MOA") with the City provided that "the amounts so contributed will be applied to <i>reduce the contributions that the City would otherwise be required to make for [UAAL]</i>" and that "the intent of this additional ... contribution ... is to reduce <i>the City's required pension contribution rate.</i>" Moreover, Police Officers' contributions were credited to Police Officers' individual retirement accounts and not the P&amp;F Retirement Fund's UAAL. Finally, those additional contributions were "one-time" only and limited to 2010-2011.</p> <p><b>Supporting Evidence:</b></p> <ul style="list-style-type: none"> <li>• Gurza Ex. 29 at 551 (Article 5.1 of 2010-2011 SJPOA MOA ["One-Time Additional Retirement Contributions"]); <i>id.</i> at 552 ["These contributions shall be treated in the same manner as any other employee contributions," i.e., "on a pre-tax basis" and "subject to withdrawal, return and redeposit"]); Gurza Ex. 30 at 571 [subsequent MOA deleting provision for increased contributions]; Vado Decl. ¶¶ 7-11; Robb Decl. ¶¶ 16-20 &amp; Ex. F.</li> </ul>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>13. For the period 2010-2011, the following six unions agreed that their members would pay additional ongoing and one time employee pension contributions, and accept wage reductions, totaling approximately 10% during fiscal year 2010-2011 to be used to defray pension plan unfunded liabilities ( except the POA agreed only to a 5.25%. one time additional pension contribution):</p> <ul style="list-style-type: none"> <li>• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),</li> <li>• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)</li> <li>• City Association of Management Personnel (CAMP)</li> <li>• International Brotherhood of Electrical Workers, Local 332 (IBEW)</li> <li>• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)</li> <li>• San José Police Officers Association (plaintiff in the SJPOA case).</li> </ul> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶¶ 6, 24, Exhs. 11, 15, 17, 23, 25, 29.</li> </ul>	<p>Disputed to the extent City implies that SJPOA proposed or that SJPOA's members in fact directly paid for UAAL or waived vested rights. Further, disputed because SJPOA did not agree its members would make any "ongoing" contributions. SJPOA incorporates its response to No. 12.</p>
<p>14. For the period 2010-2011, the following unions either agreed to a wage reduction or the City imposed a wage reduction:</p>	<p>Undisputed, but irrelevant as to SJPOA because it is not among the listed unions.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>--Association of Building, Mechanical and Electric Inspectors (ABMEI)  --Association of Legal Professionals (ALP).  --Executive Management and Professional Employees (Unit 99), and other unrepresented employees.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Dec., ¶25, Exhs. 9, 13, 32, 33.</li> </ul>	
<p>15. The 2010-2011 Agreement MOA between the City and AEA, states at Section 10.1.1:</p> <p><u>On-Going Additional Retirement Contributions.</u> Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make for the pension unfunded liability, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The</p>	<p>Undisputed, but misleading and irrelevant as to SJPOA to the extent the City implies SJPOA's MOA was materially similar to that of AEA. SJPOA is not bound to the terms of AEA's MOU. Further, disputed because SJPOA did not agree its members would make any "ongoing" contributions. SJPOA incorporates its response to No. 12.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below . . .</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Dec., ¶27, Exh, 11.</li> </ul>	
<p>16. The 2010-2011 MOA between the City and AEA, also agreed to employees making an additional one time pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability...." (Section 10.1.2)</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Dec., ¶28, Exh, 11.</li> </ul>	<p>Undisputed, but misleading and irrelevant as to SJPOA to the extent the City implies SJPOA's MOA was materially similar to that of AEA. SJPOA is not bound to the terms of AEA's MOU. SJPOA incorporates its response to No. 12.</p>
<p>17. The 2010-2011 MOA between the City and AEA stated in connection with employees paying additional pension contributions: "The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." ( <i>Id.</i> at Section 10.1.4))</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Dec., ¶27, Exh, 11</li> </ul>	<p>Undisputed, but misleading and irrelevant as to SJPOA to the extent the City implies SJPOA's MOA was materially similar to that of AEA. SJPOA is not bound to the terms of AEA's MOU. SJPOA incorporates its response to No. 12.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>18. The City's 2010-2011 agreements with the following unions stated in connection with employees paying additional pension contributions "The parties understand that in order to implement this provision, an amendment must be made to the Federated Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code" or "The parties understand that in order to implement this provision, an amendment must be made to the Police and Fire Department Retirement Plan that requires an ordinance amending the san Jose Municipal Code."</p> <ul style="list-style-type: none"> <li>• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),</li> <li>• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)</li> <li>• City Association of Management Personnel (CAMP)</li> <li>• International Brotherhood of Electrical Workers, Local 332 (IBEW)</li> <li>• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)</li> <li>• San José Police Officers Association (plaintiff in the SJPOA case).</li> </ul> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶¶ 6, 28, Exhs. 11, 15, 17, 23, 25, 29.</li> </ul>	<p>Disputed to the extent City implies that SJPOA proposed or that SJPOA's members in fact directly paid for UAAL. Further disputed to the extent the City implies that SJPOA or its members waived any vested rights. SJPOA incorporates its response to No. 12.</p>
19. In 2011, the City reached	Undisputed.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>agreements with the following unions for their members to accept an approximate 10% wage reduction for the period 2011-2012:</p> <ul style="list-style-type: none"> <li>• Association of Engineers and Architects (AEA) (plaintiff Mukhar is president),</li> <li>• Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp is president)</li> <li>• City Association of Management Personnel (CAMP)</li> <li>• International Brotherhood of Electrical Workers, Local 332 (IBEW)</li> <li>• International Union of Operating Engineers, Local No. 3 (representing plaintiffs in the Harris case)</li> <li>• San José Police Officers Association (plaintiff in the SJPOA case).</li> <li>• International Association of Firefighters, Local 230;</li> </ul> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶30, Exhs. 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, 34.</li> </ul>	
<p>20. In 2011, the City imposed a Last, Best and Final Offer on plaintiff AFSCME for an approximate 12% wage reduction for the period 2011-2012.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶ 26, Exhs. 20, 28</li> </ul>	<p>Undisputed, but irrelevant as to SJPOA because it is not among the listed unions.</p>
<p>21. For Federated employees, the Municipal Code provides:</p>	<p>Undisputed, but irrelevant as to SJPOA because its members are in the P&amp;F</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>“Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.28.755)</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. C, (Municipal Code, Chapter 3.28).</li> </ul>	<p>Retirement Plan, and not the Federated Plan.</p>
<p>22. Under the Municipal Code for Police and Fire Plan employees.</p> <ul style="list-style-type: none"> <li>• Police and Fire Plan employees not subject to interest arbitration, “shall make such additional retirement contributions as may be required by resolution adopted by the city council or by executed agreement with a recognized bargaining unit.” (Municipal Code 3.36.1525(A).)</li> <li>• Police and Fire Plan employees subject to interest arbitration, “shall make such additional retirement contributions for fiscal years 2010-2011 as may be required by executed agreement with a recognized bargaining unit or binding order of arbitration.” (Municipal Code 3.36.1525(B).)</li> </ul> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. D, (Municipal Code, Chapter 3.36).</li> </ul>	<p>Disputed to the extent City implies that Police Officers directly paid for UAAL and that SJPOA or its members waived any vested rights. SJPOA incorporates its response to No. 12.</p> <p>Further, by its terms, SJMC 3.36.1525.A does not apply to Police Officers because they are subject to interest arbitration. And SJMC 3.36.1525.B does not give the City any authority to <i>unilaterally</i> raise Police Officers’ contribution rates.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Evidence cited at SJPOA’s Response to No. 12; Robb Decl. ¶¶ 6, 10-20; Vado Decl. ¶¶ 6-11; City RJN Ex. D (SJMC 3.36.1525).</li> </ul>



**Issues Nos. 1.B-7.B: San José Charter § 1512-A (Employee Retiree Healthcare Contributions)**

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1512-A does not violate Cal. Const., Art. I, § 9 / Cal Const., Art. 1, § 19 / Cal. Const., Art. I, § 7 / U.S. Const., Art. I, § 10 / U.S. Const., 5th and 14th Amendments (takings) / 5th and 14th Amendments (due process) and does not breach any duty by Defendants to Plaintiffs. The City Charter may require employees to make contributions towards unfunded liabilities to pay for their retiree healthcare. Plaintiffs have no vested right to the City paying all unfunded liabilities for retiree healthcare.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>23. San José Charter Section 1512-A states:</p> <p>“Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• RJN, Exh. B.</li></ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers. Specifically, Police Officers have <b><i>MOA-based rights</i></b> to make contributions for retiree healthcare on a 1:1 ratio. More importantly, the MOA expressly caps any increase in contribution rates for Police Officers at 1.25% per year. The MOA further provides that employees shall not pay more than 10% of their pensionable salary to fund retiree healthcare, and mandates meet and confer to determine how to assess any excess. Further, upon retirement Police Officers have <b><i>vested rights</i></b> to City payment of the “lowest cost” retiree healthcare plan available to current Police Officers.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• Gurza Exs. 29 and 41 (SJPOA MOAs [Art. 50, including 50.1 and 50.3: “member cash contribution rate shall not have an incremental</li></ul>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	<p>increase of more than 1.25% of pensionable pay in each fiscal year”]; [Art. 50.4: mandatory meet and confer; “Nothing in this Article shall be construed to obligate Plan members to pay more than 10% of pensionable pay or the City to pay more than 11% of pensionable pay to fund retiree healthcare”]); City RJN, Ex. D (SJMC 3.36.575 [contributions set by retirement board]); SJPOA RJN Exs. 29, 30 [P&amp;F Retirement Board Resolution Nos. 3761, 3800]; Robb Decl. ¶¶ 22-24.</p> <ul style="list-style-type: none"> <li>• SJPOA RJN Ex. 7 (Ordinance 21686, including former SJMC 3.36.1930); SJPOA RJN Ex. 10 (Ordinance 25615); City RJN Ex. A (Charter Section 1500 [SJMC is proper source of benefits]; <i>id.</i> (Charter Section 1504(e) expressly authorizing the City Council to “grant greater or additional benefits” beyond those in the Charter); SJPOA RJN Exs. 8-9 (P&amp;F Retirement Plan Handbooks); SJPOA RJN Exs. 11-15 (P&amp;F Retirement Plan Annual Reports); Salvi Decl. ¶¶ 3-5; Fehr Decl. ¶¶ 3-5; Robb Decl. ¶¶ 22-26.</li> </ul>
<p>24. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961,</li> </ul>	<p>Undisputed.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</p>	
<p>25. Former San José Charter Section 78b stated:</p> <p>"Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José " ... "all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and other provisions as the Council may deem proper;..."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</li> </ul>	<p>Disputed. SJPOA incorporates its Response to No. 3.</p>
<p>26. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES</p>	<p>Disputed. SJPOA incorporates its response to No. 4.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including “Argument in Favor of Proposition A”).</li> </ul>	
<p>27. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p> <p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or</i></p>	<p>Disputed. SJPOA incorporates its response to No. 5.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p><i>any officers or employees."</i></p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. G (1965 Charter) (emphasis added).</li> </ul>	
<p>28. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. G (1965 Charter).</li> </ul>	<p>Disputed. SJPOA incorporates its response to Nos. 5 and 6.</p>
<p>29. Section 902 of the San Jose City</p>	<p>Disputed to the extent the City implies it may</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Charter states: "the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. A.</li> </ul>	<p>lawfully apply Measure B to Police Officers to deprive them of vested pension rights. SJPOA incorporates its response to No. 23.</p>
<p>30. City Charter section 602 states: "The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. A</li> </ul>	<p>Undisputed.</p>
<p>31. City Charter section 1500 states: "Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. A</li> </ul>	<p>SJPOA incorporates its response to No. 5, because the quoted text is materially similar and is part of the whole therein quoted.</p>
<p>32. The City Council has enacted some ordinances implementing Measure B.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).</li> </ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers to deprive them of vested pension rights. SJPOA incorporates its response to No. 23.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>33. Municipal Code §3.28.385(C) provides:  “Contributions for other medical benefits shall be made by the City and the members in the ratio of one-to-one.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. C.</li> </ul>	<p>Undisputed, but irrelevant as to SJPOA because its members are under the P&amp;F Retirement Plan contained in SJMC Part 3.36.</p>
<p>34. Municipal Code §3.36.575(D) provides:  “Contributions for other benefits provided through the medical benefits account shall be made by the city and the members on the ratio of one-to-one.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. D.</li> </ul>	<p>Undisputed.</p>
<p>35. In 2007, City staff submitted a memorandum to the City Council, attaching actuarial reports, concerning the GASB standards for Other Post-Employment Benefits.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶¶ 35-37, Exhs. 36, 37, 38.</li> </ul>	<p>Undisputed.</p>
<p>36. Beginning in 2009, the City reached agreement with the following City unions for employees to make annual contributions, increasing incrementally each year, to fund</p>	<p>Disputed because the City ratified an MOA with SJPOA that had such terms beginning in July 2008.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Ex. 41 (ratifying 2008-2010</li> </ul>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>up to 50% of the unfunded liabilities of retiree healthcare costs.</p> <p>--Association of Building, Mechanical and Electrical Inspectors (ABMEI),  --Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43),  --Association of Maintenance Supervisory Personnel (AMSP),  --City Association of Management Personnel (CAMP),  --International Brotherhood of Electrical Workers, Local No. 332 (IBEW);  --Municipal Employees' Federation, AFSCME Local 101 (MEF)  --Confidential Employees Association, AFSCME Local 101 (CEO);  --International Association of Firefighters, Local 230;  --San José Police Officers Association.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec. ¶¶39, Exhs. 21, 39, 40, 41.</li> </ul>	<p>SJPOA MOA).</p>
<p>37. The City's agreement with AEA stated:</p> <p>The City and Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to prefunding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare</p>	<p>Undisputed, but misleading and irrelevant as to SJPOA to the extent the City implies SJPOA's MOA was materially similar to that of AEA. SJPOA is not bound to the terms of AEA's MOU.</p>



Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). ....The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San José Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. . . .The Municipal Code and/or applicable plan documents shall be amended in accordance with the above.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec. ¶ 32 Exh. 40, AEA, Section 12.1.</li> </ul>	
<p>38. The AEA agreement further stated:</p> <p>The payments of the full ARC were to be phased in incrementally but: “[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San José Municipal Code.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Decl., ¶ 41, Exh. 39, AEA, §12.3.</li> </ul>	<p>Undisputed, but misleading and irrelevant as to SJPOA to the extent the City implies SJPOA’s MOA was materially similar to that of AEA. SJPOA is not bound to the terms of AEA’s MOU. Further, SJPOA’s members are under the P&amp;F Retirement Plan contained in SJMC Part 3.36.</p>
<p>39. The provisions from the AEA agreement on payments towards the full ARC is the same or</p>	<p>Undisputed, but irrelevant as to SJPOA because it is not among the listed unions.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>substantially similar to the text in City agreements with the following unions:</p> <p>Association of Building, Mechanical and Electrical Inspectors (ABMEI), Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43), Association of Maintenance Supervisory Personnel (AMSP), City Association of Management Personnel (CAMP), International Brotherhood of Electrical Workers, Local No. 332 (IBEW); Municipal Employees' Federation, AFSCME Local 101 (MEF); Confidential Employees Association, AFSCME Local 101 (CEO).</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Dec., ¶ 43, Exhs. 39, 40, 41.</li> </ul>	
<p>40. The SJPOA and Firefighters agreements on payment of the ARC cap the contribution towards paying the full ARC at 10% of pensionable pay and provide for meet and confer and dispute resolution procedures for amounts over that percentage.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Dec., ¶ 44, Exhs. 21[Firefighters], Exh. 41[SJPOA].</li> </ul>	<p>Disputed to the extent the City implies the 10% cap is the only applicable one, as SJPOA's MOA also imposes a yearly cap on increases to employee contributions of 1.25%. Further, SJPOA's MOA provides that "[n]othing in this Article shall be construed to obligate Plan members to pay more than 10% of pensionable pay. . . ."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Ex. 29 (2011-2012 SJPOA MOA [Art. 50, including 50.1 and 50.3: "member cash contribution rate shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year"]; [Art. 50.4: "Nothing in this Article shall be construed to obligate Plan members to pay more than 10%</li> </ul>

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Moving Party’s Undisputed Material Facts and Supporting Evidence	Opposing Party’s Response and Supporting Evidence
	of pensionable pay or the City to pay more than 11% of pensionable pay to fund retiree healthcare”]); Gurza Ex. 41 [same]; City RJN Ex. 31, 41 (extending MOA term to 2011-2013); Robb Decl. ¶¶ 22-26.
<p>41. In a Last, Best and Final Offer, the City imposed upon OE#3 the requirement that its members make increased contributions, incrementally, towards paying the full ARC.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• Gurza Dec., ¶43, Exh. 42, 43</li></ul>	Undisputed, but irrelevant as to SJPOA because it is not among the listed unions.

**Issues Nos. 1.C-7.C: San José Charter § 1511-A (Supplemental Retiree Benefit Reserve)**

There is no triable issue as to any material fact and Defendants are entitled to summary adjudication as a matter of law that San José Charter Section 1511-A does not violate Cal. Const., Art. I, § 9 / Cal Const., Art. 1, § 19 / Cal. Const., Art. I, § 7 / U.S. Const., Art. I, § 10 / U.S. Const., 5th and 14th Amendments (takings) / 5th and 14th Amendments (due process) and does not breach any duty by Defendants to Plaintiffs. The Supplemental Benefit Reserve was a discretionary retirement benefit. Plaintiffs have no vested right to the continuation of or payments from the Supplemental Benefit Reserve.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>42. Section 1511-A ("Supplemental Payments to Retirees") of Measure B states:</p> <p>The Supplemental Retiree Benefit Reserve ("SRBR" shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• RJN, Exh. B.</li></ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers to deprive them of vested pension rights. Specifically, Police Officers have a vested right to the SRBR upon retirement.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• City RJN, Ex. D (SJMC 3.36.580 [establishing initial funding mechanism of 10% of P&amp;F Retirement Plan; eligibility; the only conditions for distribution or transfer of SRBR funds; and conditions precedent for distribution to members such that distributions "shall" be made by the Retirement Board, i.e., substantial "excess earnings" from the P&amp;F Retirement Plan; placing no time limitations on funding or distribution of funds; not requiring existence of no UAAL to distribute SRBR funds]); City RJN Ex. A (Charter Section 1500 authorizing benefits in SJMC); <i>id.</i> (Charter Section 1504(e) expressly</li></ul>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
	authorizing the City Council to “grant greater or additional benefits” beyond those in the Charter); City RJN Ex. D (SJMC 3.36.120 [employee rights not forfeitable]).
<p>43. On or around April 12, 1960, the voters ratified Proposition A, which amended the San José Charter to include Section 78b.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b (“Discretionary Powers of Council Respecting Retirement”) of Article X).</li> </ul>	Undisputed.
<p>44. Former San José Charter Section 78b stated:</p> <p>“Anything in Section 78a of the Charter to the contrary notwithstanding, the Council in its discretion may at any time, or from time to time, by ordinance, amend or otherwise change the retirement plan established by said Section 78a or any retirement plan or plans established pursuant to said Section 78a, or adopt or established a new or different plan or plans for eligible members of the police or fire department of the City of San José ” ... “all as the Council may deem proper and subject to such conditions, restrictions, limitations, terms and</p>	Disputed. SJPOA incorporates its Response to No. 3.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>other provisions as the Council may deem proper;..."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. E (California Assembly Concurrent Resolution No. 17, adopted in Assembly January 18, 1961, approving amendment of Charter of San José to include Section 78b ("Discretionary Powers of Council Respecting Retirement") of Article X).</li> </ul>	
<p>45. The ballot argument in favor of Proposition A stated:</p> <p>"THIS AMENDMENT GIVES DISCRETIONARY POWERS TO THE CITY COUNCIL! It is good government to allow the City Council to be responsible for investigating problems and deciding how to solve them. [¶] THIS AMENDMENT IS SIMPLE! Leave all the technical details up to your City Council. They have a staff to assist them including a very capable City Attorney."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. F (Ballot Pamphlet for Charter Amendment – Proposition A, to be submitted to the Electors of the City of San José , April 12, 1960, including "Argument in Favor of Proposition A").</li> </ul>	<p>Disputed. SJPOA incorporates its response to No. 4.</p>
<p>46. As adopted by the voters in 1965, the San José City Charter states at Section 1500:</p>	<p>Disputed. SJPOA incorporates its response to No. 5.</p>

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Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. <i>Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees."</i></p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• RJN, Exh. G (1965 Charter) (emphasis added)</li></ul>	
<p>47. As adopted by the voters in 1965, the San José City Charter states at Section 1503:</p> <p>Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. ... However, subject to other provisions of this Article, the Council shall at all times have the</p>	<p>Disputed. SJPOA incorporates its response to Nos. 5 and 6.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. G (1965 Charter).</li> </ul>	
<p>48. Section 902 of the San Jose City Charter states: “the compensation of all City appointive officers and employees, except as otherwise provide in this Charter, shall be fixed by the Council.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. A.</li> </ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers to deprive them of vested pension rights. SJPOA incorporates its response to No. 42.</p>
<p>49. City Charter section 602 states: “The following acts of the Council shall be by ordinance: (a) Those acts required by specific provision of this Charter or by ordinance.”</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. A</li> </ul>	<p>Undisputed.</p>
<p>50. City Charter section 1500 states: “Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City.”</p> <p><b><u>Supporting Evidence:</u></b></p>	<p>SJPOA incorporates its response to No. 5, because the quoted text is materially similar and is part of the whole therein quoted.</p>



Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<ul style="list-style-type: none"> <li>RJN, Exh. A</li> </ul>	
<p>51. The City Council has enacted some ordinances implementing Measure B.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Decl, Exhs. 54, 55 (Federated, Police and Fire Ordinances).</li> </ul>	<p>Disputed to the extent the City implies it may lawfully apply Measure B to Police Officers to deprive them of vested pension rights. Specifically, Police Officers have a vested right to the SRBR upon retirement. SJPOA incorporates its responses to No. 42.</p>
<p>52. For the Federated Retirement System, the Municipal Code provided in Section 3.28.340(E): "Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding distribution, if any, of the supplemental retiree benefit reserve" to retirees and their survivors. Further, "[t]he city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental benefit reserve to said persons."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN, Exh. C.</li> </ul>	<p>Undisputed, but irrelevant as to SJPOA because its members are under the P&amp;F Retirement Plan contained in SJMC Part 3.36.</p>
<p>53. Beginning in 2010, City Council resolutions suspended distribution of SRBR funds from the Federated retirement plan for the fiscal years 2010-2011, 2011-2012, and 2012-2013.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>RJN., Exhs. L, M, N.</li> </ul>	<p>Undisputed, but irrelevant as to SJPOA because its members are under the P&amp;F Retirement Plan contained in SJMC Part 3.36.</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>54. For the Police and Fire Retirement System, Municipal Code §3.36.580(D)(5) stated: "Upon the approval of the methodology by the City Council, the Board shall make distributions in accordance with such methodology"</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN., Exh. D.</li> </ul>	<p>Disputed to the extent the City implies SJMC 3.36.580 gives the City any discretion <i>whether</i> SRBR distributions are made. Unlike the Federated Retirement Plan, the City Council has no discretion under SJMC 3.36.580 of the P&amp;F Retirement Plan whether SRBR funds are distributed; the Retirement Board has a mandatory duty to make such distributions. The City's only authority is to approve the SRBR's funding methodology, which it already did in 2002.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. D (SJMC 3.36.580, subd. D2 &amp; D5 ["the <i>board</i> shall make an annual distribution from the annual SRBR"] [<i>italics added</i>]); City RJN Ex. C (SJMC 3.28.340, subd. E [City authority over Federated Plan]); <i>id.</i> Ex. N [Resolution No. 70822 (2002) (approving SRBR funding methodology for P&amp;F Retirement Board distribution of SRBR)]).</li> </ul>
<p>55. In 2002, the City Council adopted Resolution No. 70822, which approved "The Methodology for the Distribution of Moneys In the Supplemental Retiree Benefit Reserve Of The Police and Fire Department Retirement Fund."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN., Exh. N.</li> </ul>	<p>Disputed to the extent the City implies it has discretion <i>whether</i> SRBR distributions are made. SJPOA incorporates its response in No. 54.</p>
<p>56. Beginning in 2010, the City Council amended the Municipal Code for the Police and Fire retirement plan to provide that</p>	<p>Disputed to the extent the City implies it has discretion <i>whether</i> SRBR distributions are made. The City's amendments to SJMC 3.36.580, subd. D.2, such that</p>

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Response and Supporting Evidence
<p>“there shall be no distribution during calendar years 2010, 2011, 2012 or during calendar year 2013 ...” (Municipal Code section 3.36.580(D)(2))</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN., Exh. D.</li> </ul>	<p>there were no SRBR distributions in 2010-2013, is not evidence the SJMC did not create vested rights. Rather, it is merely evidence the City violated current retirees' vested rights. SJPOA incorporates its response in Nos. 42 and 54.</p>
<p>57. In 1986 when the City Council authorized the Federated SRBR, and in 2001, when the City Council authorized the Police and Fire SRBR, the actuaries reported that the City's two pension retirement funds were fully funded.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• RJN, Exh. O [November 22, 1985 Letter from Coates, Herfurth &amp; England, to Edward F. Overton, Retirement and Benefits Administrator, re: SB650 Study]; Gurza Dec., Exh 59 [Actuarial Valuation Report, City of San José Police and Fire Department Retirement Plan, as of June 30, 2012, at p. 5 (showing plan overfunded at 114.8% as of June 30, 2001)]</li> </ul>	<p>Undisputed, but irrelevant as to whether the SJMC created a vested right in the SRBR and whether the City could abolish the SRBR unilaterally. Non existence of UAAL is not a condition for distribution of SRBR funds. SJPOA incorporates its response in Nos. 42, 54.</p>
<p>58. In 2010, 2011, and 2012, the actuaries reported that the City's two pension funds had unfunded pension liabilities.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Dec., ¶ 49, Exhs. 58, 59 [2012 Cheiron reports, Federated Employees Retirement System at p. 6,</li> </ul>	<p>Undisputed, but irrelevant as to whether the SJMC created a vested right in the SRBR and whether the City could abolish the SRBR unilaterally. Non existence of UAAL is not a condition for distribution of SRBR funds. SJPOA incorporates its response in Nos. 1, 42, 54.</p>

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<b>Moving Party’s Undisputed Material Facts and Supporting Evidence</b>	<b>Opposing Party’s Response and Supporting Evidence</b>
Police and Fire Department Retirement Plan at p. 5, tables showing unfunded pension liabilities]	
59. In 2011, and 2012, the actuaries reported that the City’s two pension funds had “excess earnings” for the year – as defined in the Municipal Code – to fund the SRBR.  <b><u>Supporting Evidence:</u></b> <ul style="list-style-type: none"><li>• Gurza Dec., Exhs. 44, 45, 46, 47, 48.</li></ul>	Undisputed.

**SJPOA’S STATEMENT OF ADDITIONAL UNDISPUTED FACTS (“AUF”)**

<b>SJPOA’s Additional Undisputed Facts and Supporting Evidence</b>	<b>City’s Response and Supporting Evidence</b>
<p>1. SJPOA is a union representing police officers working for the City of San Jose (“Police Officers”).</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• Robb Decl. ¶ 4; SJPOA RJN Ex. 17 (First Amended Complaint [“FAC”])</li></ul>	
<p>2. SJPOA filed this action on behalf of its members after the voters enacted Measure B.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• Robb Decl. ¶ 8</li></ul>	
<p>3. SJPOA’s FAC alleged, <i>inter alia</i>, Measure B violated Police Officers’ vested pension rights created by the San Jose City Charter and San Jose Municipal Code, and that it violated certain rights under its collective bargaining agreement (“memorandum of agreement” or “MOA”). Specifically, it alleged Measure B sections 1506-A, 1507-A, 1509-A, 1510-A, 1511-A, and 1512-A violated the vested rights doctrine under the California Contracts Clause, was a Takings, and violated Due Process. SJPOA alleged sections 1506-A and 1512-A also violated its collective bargaining agreement. The wrongs alleged all flow from Measure B and all sections of Measure B were enacted at the same time.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"><li>• Robb Decl. ¶ 8; SJPOA RJN Ex.</li></ul>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
17 (FAC ¶¶ 1, 24, 29, 35-36, 40-46, 49-53, 56, 97-100 [others].)	
<p>4. The San Jose City Charter ("Charter") obligates the City to establish and maintain a retirement plan for its employees.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. A (Charter Section 1500).</li> </ul>	
<p>5. The Charter mandates certain minimum retirement benefits for Police Officers, and expressly authorizes the City Council to grant additional or greater benefits through the SJMC.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. A (Charter Section 1500 ["the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan"], Section 1504 [minimum benefits], Section 1504(e) ["The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant greater or additional benefits"]).</li> </ul>	
<p>6. The Charter and SJMC Chapter 3.36 together detail Police Officers' pension benefits and rights and are known as the 1961 Police and Fire Department Retirement Plan ("P&amp;F Retirement Plan").</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. A (Charter 1500,</li> </ul>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
1504); City RJN Ex. D (SJMC Chapter 3.36).	
<p>7. The P&amp;F Retirement Plan is administered by the Board of Administration of the Police and Fire Department Retirement Plan ("Retirement Board"). The Retirement Board establishes contribution rates on an actuarial basis, i.e. to keep the P&amp;F Retirement Plan actuarially sound.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>City RJN Ex. D (SJMC 3.36.1520; SJMC 3.36.1525; see also SJMC 3.36.510 ["The retirement board shall have the exclusive control of the administration and investment of the retirement fund"]); SJMC 3.36.575 [retiree healthcare: "Contribution rates . . . shall be established by the board as determined by the board's actuary and shall be borne by the city and members of the plan"]).</li> </ul>	
<p>8. Police Officers and the City pay into the P&amp;F Retirement Plan to fund it, as specified in the funding provisions of the Charter and the SJMC.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>City RJN Ex. D (SJMC 3.36.1520, 3.36.1525, 3.36.575).</li> </ul>	
<p>9. Retirement benefits are granted as a form of deferred compensation and inducement to future service with the City of San Jose. The structure of the P&amp;F Retirement System has</p>	

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SJPOA’s Additional Undisputed Facts and Supporting Evidence	City’s Response and Supporting Evidence
<p>incentives for Police Officers to work with the City for twenty to thirty years.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>City RJN Ex. A (Charter Section 1504(a) [minimum benefits start at 20 years of service]; SJPOA RJN Ex. 18 (Total Compensation Information from San Jose Office of City Manager [“the value of the City’s total compensation package also includes the cost of benefits, such as health insurance and retirement benefits”]); Robb Ex. A [pension calculation incentivizing longer service with City]; Robb. Ex. B-C (various recruiting brochures listing retirement as element of compensation)]; Robb Ex. D (1980-81 recruitment brochure: “For San Jose Police Officers, security now means fully-paid medical and dental coverage . . . . [p] Security for the future means . . . a retirement program . . . .”]; <i>ibid.</i> at p. 4 [“Saving that amount would be difficult on your own, but together you and the San Jose Police Department can provide for your long-range financial security”]).</li> </ul>	
<p>10. In 2011, the City began a campaign to reduce all City employees’ pension benefits, including those of Police Officers, by threatening to declare a fiscal emergency and by sponsoring a voter ballot initiative, Measure B, to attack pension rights.</p>	



SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
<p>The City's mayor or his representatives made repeated public assertions that, by Fiscal Year ("FY") 2015-16, the City's retirement contribution costs would reach \$650 million per year.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Robb Decl. ¶ 7; City RJN Ex. B (Measure B); SJPOA RJN Ex. 16 (State Auditor Report 8/2012 at 1); SJPOA RJN Ex. 23 (7/28/10 Rules and Open Government Committee Report [discussing potential ballot measure]); SJPOA RJN Ex. 24 (8/3/10 City Council Minutes [discussing ballot measure]); SJPOA RJN Ex. 25 (5/13/11 Memorandum from Mayor to City Council recommending declaration of fiscal and public safety emergency)].</li> </ul>	
<p>11. In fiscal years 1993 through 2004 the City reduced its regular contributions into the P&amp;F Retirement Plan by approximately \$80 million. It did so consistent with a theory that because it was required to pay all UAAL it was accordingly entitled to take all gains. The Retirement Board later concluded in 2011 that this subsequently increased the P&amp;F Retirement Plan's unfunded liability by approximately 44%.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>SJPOA RJN Ex. 19 (3/28/11 P&amp;F Retirement Plan Memorandum from Representative S. Kaldor to</li> </ul>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
<p>Chairman D. Bacigalupi re ARC Calculation); Robb Decl. ¶ 21 &amp; Ex. E (2/19/98 Saltzman &amp; Johnson Legal Memorandum); SJPOA RJN Exs. 27-28 (9/17/97 and 12/29/97 City Attorney Legal Memoranda).</p>	
<p>12. In early 2012, the independent actuary for the P&amp;F Retirement Plan issued a report with updated projections for the City's retirement costs showing the City's retirement contributions just for Fiscal Year 2012-13 would actually be \$55 million less than previously budgeted by the City. The actuary estimated that FY 2015-16 costs would be approximately \$320 million for both the P&amp;F Retirement Plan and the Federated Plan.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• SJPOA RJN Ex. 22 (12/1/11 Memorandum from City Manager to Mayor and City Council re Declaration of Fiscal Emergency ["In July 2011, Cheiron had projected that the retirement contribution for Fiscal Year 2012-2013 would increase to \$160 million. Based on the Board action today, the estimated Fiscal Year 2012-2013 retirement contribution for pension will be approximately \$105 million"]); Gurza Ex. 57 (actuarial estimates for P&amp;F Retirement Plan and Federated Retirement Plan).</li> </ul>	
<p>13. The Mayor immediately withdrew</p>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
<p>his fiscal emergency proposal but nonetheless the City Council placed Measure B on the ballot for voter approval.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• SJPOA RJN Ex. 20 (12/1/11 Memorandum from Mayor to City Council re "Fiscal and Service Level Emergency and Pension Reform Ballot Measure").</li> </ul>	
<p>14. Measure B was enacted by San Jose's voters on June 5, 2012.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• SJPOA RJN Ex. 21.</li> </ul>	
<p>15. After Measure B was enacted, the California State Auditor determined the City's retirement cost projections were "unsupported and likely overstated."</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• SJPOA RJN Ex. 16 (California State Auditor's Report, August 2012 at 1 [the City "referred to a projection that the city's annual retirement costs could increase to \$650 million by fiscal year 2015–16, a projection that our actuarial consultant determined was unsupported and likely overstated"]).</li> </ul>	
<p>16. Measure B purports to change Police Officers pension rights going forward.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. B (Section 1502-</li> </ul>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
A).	
<p>17. Measure B further provides that it "Supersedes all Conflicting Provisions," including other Charter and SJMC sections.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. B (Section 1503-A).</li> </ul>	
<p>18. Measure B added new provisions not in the prior Charter expressly reserving voters' rights and anti-vesting language.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. B (Section 1504-A as reservation of voter's rights); <i>id.</i> (Section 1508-A(h) as express anti-vesting language); City RJN Ex. A (Charter).</li> </ul>	
<p>19. Generally, Police Officers have only paid that pension UAAL generated by increased benefits.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN, Ex. D (SJMC 3.36.1520: employee contributions defined as not including "any deficit resulting from the fact that previous rates of contribution . . . were inadequate"); SJMC 3.36.1550: "the City of San Jose shall contribute to the retirement fund, monthly, all such amounts . . . to make this plan actuarially sound"; SJMC 3.36.1555: employees only pay UAAL for new or increased benefits); City RJN Ex. A (Charter Section</li> </ul>	

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SJPOA’s Additional Undisputed Facts and Supporting Evidence	City’s Response and Supporting Evidence
<p>1500 [authorizing benefits in SJMC]; <i>id.</i> (Charter Section 1504(e) [expressly authorizing the City Council to “grant greater or additional benefits” beyond those in the Charter]); <i>id.</i> (Charter Section 1504(b)-(c) [mandating actuarially sound system, including new benefits]; SJPOA RJN Exs. 1, 11, 13, 14 [legislative history of City payment of all UAAL in Charter and SJMC, except for between 1965-71]); Robb Decl. ¶¶ 13-14 [officers do not pay UAAL; all current Police Officers hired after City enacted ordinance obligating itself to pay all UAAL]); City RJN Ex. D (SJMC 3.36.120.A [“the rights of each member . . . to benefits accrued . . . shall be nonforfeitable]).</p>	
<p>20. Police Officers did not pay UAAL directly or otherwise waive any vested right through Article 5.1 of the 2010-2011 SJPOA MOA. Police Officers’ contributions were not credited to Police Officers’ individual retirement accounts and not the P&amp;F Retirement Fund’s UAAL. Finally, those additional contributions were “one-time” only and limited to 2010-2011.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Gurza Ex. 29 at 551 (Article 5.1 of 2010-2011 SJPOA MOA [“One-Time Additional Retirement Contributions”]); <i>id.</i> at 552 [“These contributions</li> </ul>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
<p>shall be treated in the same manner as any other employee contributions," i.e., "on a pre-tax basis" and "subject to withdrawal, return and redeposit"); Gurza Ex. 30 at 571 [subsequent MOA deleting provision for increased contributions]; Vado Decl. ¶¶ 7-11; Robb Decl. ¶¶ 14-19 and Ex. F.</p>	
<p>21. If applied to Police Officers, Section 1506-A will require them to pay for 50% of <i>existing</i> UAAL through salary decreases of 4% per year, with a maximum decrease of 16%, even though that UAAL accrued when the SJMC mandated the City pay for it.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. B (Section 1506-A); Robb Decl. ¶ 15.</li> </ul>	
<p>22. Police Officers have a vested right to the SRBR upon retirement.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN, Ex. D (SJMC 3.36.580 [establishing initial funding mechanism of 10% of P&amp;F Retirement Plan; eligibility; the only conditions for distribution or transfer of SRBR funds; and conditions precedent for distribution to members such that distributions "shall" be made by the Retirement Board, i.e., substantial "excess earnings" from the P&amp;F Retirement Plan; placing no time limitations on funding or distribution of funds;</li> </ul>	

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SJPOA’s Additional Undisputed Facts and Supporting Evidence	City’s Response and Supporting Evidence
<p>not requiring existence of no UAAL to distribute SRBR funds]); City RJN Ex. A (Charter Section 1500 authorizing benefits in SJMC); <i>id.</i> (Charter Section 1504(e) expressly authorizing the City Council to “grant greater or additional benefits” beyond those in the Charter); City RJN Ex. D (SJMC 3.36.120 [employee rights not forfeitable]).</p>	
<p>23. The City Council has no discretion under the P&amp;F Retirement Plan <i>whether</i> SRBR funds are distributed. The SJMC makes distribution of SRBR by the Board funds mandatory. The City’s only authority is to approve the SRBR’s funding methodology, which it already did in 2002.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• City RJN Ex. D (SJMC 3.36.580, subd. D2 &amp; D5 [“the <i>board</i> shall make an annual distribution from the annual SRBR,” <i>italics added</i>]; <i>id.</i> D5 [“Upon approval of the methodology by the city council, the <i>board</i> shall make distributions in accordance with such methodology,” <i>italics added</i>]); City RJN Ex. C (SJMC 3.28.340, subd. E [City authority over Federated Plan]); City RJN Ex. N [Resolution No. 70822 (2002) (approving SRBR funding methodology for Board to administer))].</li> </ul>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
<p>24. The City abolished the SRBR in 2013, pursuant to Section 1511-A.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Ex. 55 (Ordinance repealing SJMC 3.36.580 effective March 1, 2013).</li> </ul>	
<p>25. Police Officers have <b><i>MOA-based rights</i></b> defining their contributions for retiree healthcare, i.e., on a 1:1 ratio, expressly capping any increase in contribution rates for Police Officers at 1.25% per year, and capping Police Officers' contributions to pay for retiree healthcare to no more than 10% of their pensionable salary. The MOA also mandates meet and confer to determine how to assess any excess.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>Gurza Exs. 29 and 41 (SJPOA MOAs [Art. 50, including 50.1 and 50.3: "member cash contribution rate shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year"]; [Art. 50.4: mandatory meet and confer; "Nothing in this Article shall be construed to obligate Plan members to pay more than 10% of pensionable pay or the City to pay more than 11% of pensionable pay to fund retiree healthcare"]); City RJN, Ex. D (SJMC 3.36.575 [contributions set by retirement board]); SJPOA RJN Exs. 29, 30 [P&amp;F Retirement Board Resolution</li> </ul>	



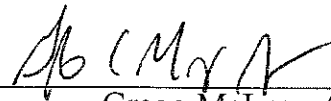
SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
Nos. 3761, 3800]; Robb Decl. ¶¶ 22-24.	
<p>26. Upon retirement Police Officers have <i>vested rights</i> to City payment of the "lowest cost" retiree healthcare plan available to current Police Officers.</p> <p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• SJPOA RJN Ex. 7 (Ordinance 21686, including former SJMC 3.36.1930); SJPOA RJN Ex. 10 (Ordinance 25615); City RJN Ex. A (Charter Section 1500 [SJMC is proper source of benefits]; <i>id.</i> (Charter Section 1504(e) expressly authorizing the City Council to "grant greater or additional benefits" beyond those in the Charter); SJPOA RJN Exs. 8-9 (P&amp;F Retirement Plan Handbooks); SJPOA RJN Exs. 11-15 (P&amp;F Retirement Plan Annual Reports); Salvi Decl. ¶¶ 3-5; Fehr Decl. ¶¶ 3-5; Robb Decl. ¶¶ 22-26.</li> </ul>	
<p>27. If Section 1512-A is applied to Police Officers, their contributions can exceed the yearly and overall contractual caps in the MOA, and Police Officers would have no recourse to the meet and confer provisions of the MOA the parties negotiated to determine how to pay for any contributions above 10%. Additionally, Police Officers will lose their right to City payment of the premium for the lowest cost healthcare plan available to active Police Officers.</p>	

SJPOA's Additional Undisputed Facts and Supporting Evidence	City's Response and Supporting Evidence
<p><b><u>Supporting Evidence:</u></b></p> <ul style="list-style-type: none"> <li>• Robb Decl. ¶¶ 22-26; Selvi Decl. ¶¶ 3-5; Fehr Decl. ¶¶ 3-5.</li> </ul>	

Dated: May 3, 2013

CARROLL, BURDICK & McDONOUGH LLP

By



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